2/02 Exam Multistate Essay Examination Question 1 - Example 1

#1
Ruling on Teachers motion to dismiss for lack of subject matter jurisdiction.

The Federal courts are courts of limited jurisdiction. A federal court will hear a case that arise under federal law, or a case that has diversity (+amount) jurisdiction. In this case, we have a negligence action filed by Passenger against T. This does not arise under federal law. To determine if diversity jurisdiction is present we must first determine the domicile of the parties. Passenger is a citizen of State A. No other facts indicate that he is domiciled elsewhere. Teacher is domiciled in state B. In order to change a domicile, a person must intend to create a new domicile AND be present in the state. While Teacher had only intent to be domiciled in state B at the time of the accident & not presence, he was still domiciled in state A at the time of the accident. However, domicile is determined at the time a claim is filed. In this case, T had established his new domicile in state B by filing. Since P & T are domiciled in different states, we do have diversity. The other requirement before a federal court has subject matter jurisdiction over a claim is amount. The amount at issue in the case must be at least $75,000. Since P is suing T for $100,000 the amount requirement is met. Therefore since the parties are domiciled in different states & the amount requirement is met, the federal court has subject matter jurisdiction over the claim & T's motion to dismiss should be denied.

#2
Venue in federal court is proper in a district where any defendant resides or where there is a significant number of actions took place resulting in the claim (cause of action accrued) In this case, venue would be proper in state B where T is now residing & domiciled, **or** in state A, where the accident took place. Therefore, P properly filed suit in the district court for the district of state A and the federal court should dismiss T's motion to dismiss for improper venue.

#3
To determine if the district court would have subject matter jurisdiction over P's direct claim against R, we must first test to see if traditional jurisdiction would exist. It is not a claim arising under Federal Law since it is also a negligence claim. As for diversity, P is domiciled in state A. A corporation is domiciled where it is organized & where its principal place of business is located. R is organized in state C with its PPB in state A. Therefore since P & R are domiciled in state A there is no diversity & we don't get to amount.

P may be able to use supplemental jurisdiction to bring the claim against R. Supplemental jurisdiction can be used to join a claim against another defendant if it arises from a common nucleus of operative fact. While that would seem to be the case here, since the accident is the "common nucleus of both claims" a Plaintiff who is in federal court on his first claim by diversity cannot use supplemental jurisdiction to bring in a second claim.

2/02 Exam Multistate Essay Examination Question 1 - Example 2

#1
Federal courts are courts of limited jurisdiction, therefore you must satisfy certain grounds in order for the court to hear your case. Generally, the federal court will have jurisdiction if the claim consists of (1) federal law or a constitutional matter, or there is complete diversity of citizenship.

In this case there is no federal law at issue. The facts state that the action is negligence. Thus, jurisdiction would be improper under federal law.

Passenger may assert diversity of citizenship. For this, Passenger must show complete diversity of citizenship, where not one plaintiff is from the same state as any one defendant, and Passenger must plead damages in excess of $75,000. Here Passenger pleads damages of $100,000.

The issue is whether there is complete diversity when Teacher was domiciled in state A at the time of the accident. Diversity of citizenship is based on where the parties are domiciled. A person is domiciled somewhere when there is 1) intent to stay 2) and physical presence. Here, Teacher wanted to move to state B, but was not physically present when accident occurred. Therefore, Teacher was a state A domicilary at the time of the accident.

However, Passenger filed suit after Teacher arrived in state B. Diversity is determined at the time of filing and not at the time of the accident. Therefore, there was complete diversity of citizenship. Plaintiff was from state A and defendant from state B. Thus the court should not dismiss.

#2
The general rule with venue is that venue is proper where defendant resides where defendants are all residents of the same state. Or, venue is proper where a substantial series of events that gave rise to the cause of action accrued. In this case, the defendant resides in state B, but the accident took place in state A. State A would be the proper venue because the accident happened there. The court should not dismiss for improper venue. The court may transfer to a more convenient forum, but the facts do not appear to bring this into issue.

#3
Generally, there must be complete diversity as to all claims and all parties. Because Rentco's principal place of business is in state A, diversity would be destroyed. As to a corporation, it resides where it is incorporated or where its principal place of business is. The facts indicate the PPB of Rentco is in state A (as to avoid a nerve center or nucleus center analysis).

The exception to the complete diversity rule is that a ancillary claim can be heard when it arose out of the same nucleus of operative facts. In such an incident the court will have jurisdiction over the claim. The additional party was sought to indemnify Teacher for the accident if Teacher is liable. Because it concerns the same facts, the court would have jurisdiction.

But the court would not have jurisdiction over Passenger's amended complaint against Rentco. The general rule is that where Plaintiffs acquired jurisdiction based on diversity, then plaintiff cannot obtain supplemental jurisdiction of additional claims where diversity does not exist. In this case, Rentco and Passenger both are domiciled in state A, so the court does not have jurisdiction by diversity.

2/02 Exam Multistate Essay Examination Question 1 - Example 3

#1
The issue presented is whether the state A U.S. court has diversity jurisdiction over Passenger's (P's) cause of action. Diversity jurisdiction requires complete diversity, i.e., that each plaintiff resides in a different state than each defendant. It also requires an amount in controversy over $75,000. The second requirement is clearly met in this case as P seeks damages in excess of $100,000. The claimed damages control if the claim is made in good faith & it is legally possible that the damages reach the claimed amount.

Citizenship, for purposes of determining diversity jurisdiction, is measured at the commencement of the suit, i.e., at the filing of the complaint. P is clearly a citizen of state A. T will be treated as a citizen of state B. Citizenship of individuals is where the person physically resides & intends to remain. T purchased a home & worked in state B at the time the claim was brought. Thus, he resided in state B. At the time of filing, the court possessed diversity subject matter jurisdiction & the motion to dismiss should be denied, as it applies to teacher.
Stop answer to Question #1

Following applies to Question #3
Teacher subsequently implead RentCo by third party complaint for indemnification. The third party complaint is w/in the court's supplemental jurisdiction, i.e., no independent jurisdictional basis is required. However, an independent jurisdictional ground is required for P to bring a claim directly against RentCo. Otherwise P would be able to avoid the diversity rules by simply waiting for Teacher to implead RentCo. RentCo, a corporation, is deemed a resident of its place of incorp & its principal place of business. RentCo is thus a citizen of State C & State A. Because P is a state A resident, the court lacks jurisdiction over P's claim against RentCo.

#2
At issue is whether the federal court had proper venue over this action. In this case, the motion should be denied as venue is proper in State A. A federal district court has venue 1) where any defendant resides if all reside in the same state, 2) where a substantial part of the events giving rise to the C/A occurred, 3) & in diversity cases where my defendant is subject to personal jurisdiction. The first option does not give a state A court venue because Teacher is a State B resident. The second option does, however, give State A court venue. In this case, the accident occurred in State A, the rented truck is from State A, & the plaintiff is from State A. The events giving rise to the case of action are defective maintenance of the truck & arguably negligent driving. Both of these occurred in State A. Thus, State A court is a proper venue because a substantial part of the events giving rise to the claim occurred in State A. You only get to the 3rd option if neither of the first two venue options are present. Since, the 2nd option confers venue, I will not discuss the third, i.e., whether State A had jurisdiction over Teacher.

#3
I got ahead of myself and answered this in question 1. Please refer to that answer. To review, P can not bring a direct action against RentCo. RentCo is a citizen of State A, as is P. Thus, diversity is lacking & P's claim against a third party defendant is not w/in court's supplemental

jurisdiction, i.e., an independent jurisdictional ground is required & is not present here. So, the court would not have subject matter jurisdiction.

2/02 Multistate Essay Examination Question 2 - Example 1

#1
A purchase money security interest properly filed within 20 days for equipment is superior to a previously perfected security interest with a 'dragnet' clause (i.e. a hereinafter acquired clause the future advance clause)

Attachment occurs when the last of value, agreement (security agrmt), or debtors right occurs.

In this case, the bank gave value, obtained a security agrmt, and the debtor had rights on Jan 2.
—The Bank attached on Jan 2.
—The Bank perfected by properly filing on Jan 3.
Because of the 'hereinafter' acquired language, the bank has a security interest in the computer when the debtor obtains his right — But, the bank is cut short by the Seller's purchase money security interest.

Since the seller loaned the money to buy the computer he gets a PMSI, but the Seller must file to perfect that within 20 days of the equipment delivery. The Seller gave value, took a security agrmt, and the debtor got rights on 2-1 —So the Seller attached. He delivered on 2-12 and filed the financing statement on 2-20 within 20 days for the attachment and the delivery.

The Bank loses to the Seller.

#2
A lien creditor may not upset a PMSI on equipment unless the PMSI holder failed to properly file.

The lien creditor attaches upon judgment and seizure.

In this case Larry attached on 2-14 when the Sheriff seized.

However, Larry is a lien creditor and cannot upset Seller if Seller files within 20 days a financing statement on the equipment. The 20 day grace period applies even though Larry has seized the computer.

Larry must surrender the computer to Seller.

Seller has the superior claim.

#3

Notice from a lien creditor to a secured party does not cut off the secured parties rights to the collateral already defined in the hereinafter acquired clauses to secure future advances.

The issue is really if the lien creditors' seizure and notice have terminated the Bank's rights to the debtors assets.

In this case as soon as the debtor acquired the equipment and his rights in it—it related back per the hereinafter acquired clause and was deemed perfected on Jan 3 in the Bank's financing statement.

That is well before Larry seized the computer. Therefore as to Larry, the Bank is also superior. The $12,000 advance is immaterial. The computer is collateral for the $5000 loan because of the Hereinafter clause.

The Bank can take the computer over Larry.

2/02 Multi-state Essay Examination Question 2 - Example 2

#1
The first issue is who has priority, the Bank or the Seller. The Bank was the first to file a financing statement. The Bank also became attached to the property. Attachmt requires new value given, the D must have the power to transfer the asset or rights in that asset, and a sec. agr. must be signed. From the facts, Bank was properly attached and properly perfected. Seller has a Purchase Money Sec. Interest in equipment because he took an interest in a piece of collateral and gave money for it, must be traced which is done by the facts. Seller was attached b/c he gave value, D had power to transfer rights in collateral, and a proper sec. agr. was signed by D. D took poss of the collateral on February 12. Seller has 20 days to file a financing stmt on that collateral from the date D takes possession. The fin stmt was filed on February 20, w/in 20 days. Therefore the Seller's PMSI will take priority over the bank's SI even tho' the bank perfected/filed first—special rule for PMSI. This was equipment b/c it was primarily used in the business and it was not cons. good (personal use) or inventory or farm product.

#2
As between Seller and Larry, the next issue is who has priority. Seller has PMSI in equipment b/c the collat here was equipment and the Seller extended value for a particular piece of collateral. (tracing) Seller was attached b/c value was given, D had pwr to transfer rts in collat, and a valid sec. agr. was signed. Larry is a lien creditor b/c his interest was created by jud. process when the Sheriff levied the property. A PMSI in equipment must be perfected by filing a fin statement w/in 20 days of D rec'ing possession. D. rec'd poss on Feb. 12 and fin stmt was filed on Feb 20, w/in 20 days. Perfection in equipment relates back to the date that D took possession which is Feb 12. Therefore Seller will have priority over Larry, the lien creditor since it properly perfected its sec. interest and b/c it related back to Feb 12, 2 days before Larry's lien attached to the computer. This again is equipment b/c its primary use controls which is business. Therefore it is not a cons. good (personal use), inventory, or farm product. (Cons good would autom. perfect w/o filing a fin stmt too)

#3
A Secured party who has a valid security interest must also include a description in order for future advances to be included. A future advances requires a new security agreement to be signed or requires a future advances clause in the orig sec. agreement. Since the agr. included a proper clause, the interest in the future advance is perfected. The Sec Interest taken by Bank included after-acquired equipment b/c of the description. It appears from the facts that there was a fut. advances clause. A lien creditor such as Larry (b/c he acquired his interest from a jud. process by Sheriff levying property) would win against an unperfected secured party if there was no new SA or clause. In this case, Larry's lien attached on February 14 when the Sheriff lawfully seized the property. Bank advanced $12,000 on Feb. 17 and was perfected. Since bank had a proper future advances clause in the orig. Sec. Agr. there is no need for a new Sec. Agr. for the SI to be perfected. Therefore bank would have priority over Larry's interest b/c of the clause and filing of original financing stmt.

2/02 Exam Multistate Essay Examination Question 2 - Example 3

#1
Generally, the first to file or perfect has priority as between two competing security interests. For sec. int. you must have attachment which requires an agreement, for value given by the secured party and debtor must have rights in the collateral. The agreement must be authenticated by the debtor, in record, describing the collateral and creating a sec. int. The Banks agreement w/debtor met these requirements and thus the sec. int. attached. To perfect you must file a financing stmt in the proper location that describes the collateral and has the name of the debtor and the secured party. Bank has also complied with this and therefore became perf. on Jan. 3.

A PMSI party has 20 days to file after the debtor takes possession to gain a superior priority to parties who are already perfected. A PMSI is one who sells goods on credit or funds $ to allow debtor to purchase & retains a sec. int. in the goods. Seller sold the computer on credit and took a sec. int. in it so seller has a PMSI. Debtor took possession of the computer on Feb. 12 so seller had a 20 day grace period in which to file and perfect. Seller had to filed by Feb. 22 to gain its superior priority interest, seller filed on Feb. 20. This rule applies to non-inventory, Seller sold computer to Debtor to use in his business, therefore it is classified as equip. & Seller has the superior sec. int. All elements for attachment (agree., value, Rts & perf.) are met.

#2
Generally, a secured party w/a PMSI has a superior interest over a lien creditor. As stated above, Seller met all the reqs. to get his superior interest and despite the fact that the lien creditor's interest was before Seller's and that he has possession, Seller still has superior interest as to all prior perfected sec. int. and lien creditors.

#3
Generally, with proper language in the security agree. a secured party can use the same collateral to secure future advances. These advances are covered by the original security agreement and financing statement. No new agreements need to be made with the new loan. The banks sec. agree. contained the proper future adv. clause and thus the computer serves as collateral for this new loan. The Bank perfected on Jan. 3, the lien creditor did not get its judgment until Feb. 14, thus the Bank has a superior interest in the collateral and the advance of $12,000 is superior to Larry despite the bank knowledge of the judgment before the advance. Bank's interest is superior.

2/02 Exam Multistate Essay Examination Question 3 - Example 1

#1
Generally, a limited partner does not control the day-to-day business of a limited partnership. That is, in a limited partnership, the general partner is usually charged with the day-to-day management and control, while the limited partners are not. This forms the basis for the reason why general partners are personally liable for the partnership, while limited partners are only liable up to their capital contributions, i.e., since they don't control the partnership, they should not be personally liable. Limited partners, however, do exercise their rights in voting on more large-scale matters relating to the partnership. However, the limited partners cannot decide how the day-to-day business is to be conducted.

#2
Limited partners do have rights to obtain information relating to the operations and records of a limited partnership. Generally, the motive or intent of such review must be for partnership purposes. In addition, the information must be provided at a reasonable time in a reasonable manner.

#3
As a purchaser of a limited partner's interest, Edward would have rights to share in the profits or income of the partnership. He would NOT, however, become a partner per se. That is, Edward would be allowed to receive the profits, but would not be entitled to VOTE on partnership matters nor would he be allowed to represent himself as a partner of Transitions.

Generally, a partner must contribute to pay for losses in equal shares as that of how profits are shared. Here, the default rule would apply (according to the facts), thus Edward may have acquired the right to pay for Transitions' losses if its business continues to fall. If it begins making profit, of course, he would be entitled to that as well.

Lastly, Bill's disapproval of Donna's action probably will not affect her ability to sell her rights (right to receive profit/loss) to Edward - unless of course the Partnership Agreement indicates otherwise.

2/02 Exam Multistate Essay Examination Question 3 - Example 2

#1
Limited partners in a limited partnership are considered passive investors. They are protected by limited liability, and are only liable for the amount they have invested in the partnership. In exchange for that liability protection, they give up the right to manage the p'ship and to conduct its daily affairs. A general partner, on the other hand, is personally liable should the assets of a partnership not be sufficient to cover its liabilities and/or claims against it. The GP therefore has a right to conduct the business of the limited partnership in exchange for the increased risk of loss.

Carl and the others, as limited partners, have no right to conduct the day to day business of Transitions because they are limited partners.

#2
While limited partners have limited rights with respect to conducting the business of a limited partnership, they are investors and do have a right to see the LP's records and information about its operations. They can ask the GP to see these items for any reason.

Bill was wrong to refuse Carl's request for information and records of the partnership. Carl may get that information if he wishes.

#3
A partner in a partnership or an LP in an LPship may sell her financial interest in the business (e.g. her right to receive profits) but doing so does <u>not</u> make that person - the buyer - a partner. An individual can be come a partner in a partnership (or a limited partner in a limited partnership) only upon agreement of the other partners. A partner may freely sell her right to the financial risks and rewards of partnership, but cannot unilaterally give a person the rights of a partner, such as voting rights. Therefore, in this case, Edward acquired Donna's financial interest in the LP Transitions, but is not a limited partner unless the other partners make him one.

2/02 Exam Multistate Essay Examination Question 3 - Example 3

#1
Carl and the other limited partners cannot decide how the day-to-day business of Transitions should be conducted.

In a limited partnership, the general partners have all the rights and duties of partners in a regular partnership, including the right to manage the business and the duty to exercise care and cooperate. A general partner can be personally liable for partnership obligations.

On the other hand, a limited partner has limited rights. A limited partner shares with the general partners a right to profits, to withdraw from the partnership, and to dissolve the partnership. A limited partner cannot be involved in the day-to-day operations of the partnership. A limited partner only has a right to vote on extraordinary matters. Accordingly, a limited partner is only liable for his or her contribution, unless circumstances suggest that the partner is involved in the partnership's business, in which case the limited partner can be held personally liable for the partnership's obligations.

This said, Carl and the others cannot decide the day-to-day business of Transitions. They risk being held personally liable if they get so involved. They only have a right to vote on specific issues, such as a complete change in direction for the business, which is not the case here.

#2
Carl has a right to obtain information about the business operations and records of Transitions. One right of a limited partner is a right to partnership records. A limited partner must be able to assess the status of the business. Bill cannot keep information to himself, especially if it impacts the business. Reciprocally, Bill, as a general partner, has a fiduciary duty to provide all limited partners with information about Transitions.

Bill might argue that Carl plans to use the information for purposes that a limited partner can't - running day-to-day operations. But, Bill does not know this. Further, the limited partners have a right to change the business by dissolving it, and if they all agree they may appoint a new general partner to run the business.

#3
Edward obtained a right to profits and, if the partnership is dissolved, any surplus.

A limited partner may sell his or her interest without the partnership dissolving. However, the limited partnership solely sells her property right in the interest. If the limited partner sold more then the partnership would dissolve, absent a contradictory provision in the limited partnership agreement. The limited partner retains, thus, her right to vote on specific matters, withdrawing and dissolve the partnership.

Here, Edward simply has a right to profits. As the partnership has not yet distributed any profits, this is not much.

The fact that Bill disapproves of the sale is unavailing. Nothing in the agreement restrains the sale of partnership interests. However, Bill is correct in saying that Edward is not a partner.

2/02 Multi-state Essay Examination Question 4 - Example 1

#1
Andrew – Generally, stock transfer restrictions are enforceable against its holder if the restriction(s) is (1) duly noted in the Articles of Incorporation and (2) conspicuously noted on the stock certificate itself. Here, the stock of Cyco appears to comply with these requirements, thus the restrictions would be enforceable against Andrew. In certain cases, a court may find such restrictions unreasonable and unenforceable. However, in a corporation such as Cyco with only five (5) shareholders, such transfer and pledge restrictions are probably reasonable.

Bank –When a party obtains possession of various certificates of title (such as stock certificates), (1) in good faith and (2) for value, it is deemed to be a lawful holder of the certificate. (3) In addition, the party must take the certificate without notice of any claim or defense to the certificate. If Bank meets these requirements, it is entitled to stock ownership and its rights. Here, the Bank gave value (i.e., loaned Andrew money) in good faith. However, since Andrew delivered the share certificates to Bank it knew or should have known that Cyco would have a defense to its ownership in light of the conspicuous restrictions on the certificate. Thus, the stock transfer restriction would be enforceable against Bank.

#2
Since Bank is not protected by the rule set forth in (1), Bank would not be entitled to vote at the meeting. That is, he perfected his security interest in the stock with notice or at least constructive notice of the transfer restriction.

* If "lawful owner" means he was entitled to ownership of the stock, he still would not be entitled to vote since he was NOT the record owner of the stock on the record date. This is required to exercise a stock owner's right to vote. As a shareholder, Bank could have requested that Andrew issue a proxy to the Corporate Secretary authorizing the Bank to vote his shares (this would have been irrevocable since it was coupled with an interest, i.e., the Bank purchased the stock).

#3
For a quorum to be present for shareholder action at the annual meeting, a majority of the shares must be present or represented at the meeting. Thus, since there are 100 shares of common stock, at least 51 shares must be represented to have a quorum. In this case, the shares are owned equally among the shareholders, thus each owns 20 shares. Therefore, at least 3 persons (which will represent 60 shares-more than 51), must be present or represented. The facts show that Barbara, Carol and Frank attended the meeting. Frank represented David's shares by proxy. Thus, 60 shares were represented at the meeting, and a quorum was present regardless of whether Bank was entitled to vote or not. Note that if this were not an annual meeting, and was a meeting for a special purpose to vote on a fundamental change, the required representation would need to be 2/3 of all outstanding shares.

2/02 Multi-state Essay Examination Question 4 - Example 2

#1
The stock transfer restriction is enforceable against Andrew. Ordinarily stock transfer restrictions are inappropriate as restraints or alienation. An exception exists, however, for close corporations which are those corporations whose shares are held by a small number of individuals. Such appears to be the case here. Further justifying the finding of a close corporation is the fact that all shareholders are family members. This give rise to an implication that the corporation is to be closely controlled by the family. Given that such restraints on alienation (such as the one here, or one giving the corporation the right of first refusal) are allowable in close corporations, the stock transfer restriction is enforceable against Andrew.

The restriction is also likely enforceable against the bank. The bank took possession of the stock certificates and later foreclosed with the knowledge that the stock certificates could not be pledged, as evidenced by the restriction on the back of the certificate. Because Andrew had no authority to pledge the stock, and because the Bank knew of this fact it could not take title to the stock. Additionally, secured parties are only entitled to exercise strict foreclosure on nationally-traded stock for which a price is established by a fixed market. The facts here would seem to indicated this is not the case.

#2
No, Bank was not entitled to vote, even if it was the lawful owner. Only shareholders as of the record date for a meeting are entitled to vote. These shareholders can be determined by looking to the corporate books as of the record date. On the record date, Andrew was listed as a shareholder, and Bank's ownership interest had not been recognized on the record date. In order to acquire the right to vote, Bank should have made attempt to get its ownership of Andrew's shares recognized by the record date. Bank could have done this by notifying the corporation of its ownership interest in the shares when it foreclosed on the shares.

#3
Yes, a quorum was present. In order to have a quorum present there must be a majority of outstanding issued shares at the meeting. Barbara & Carol attended, so that provided 40 out of 51 necessary shares (51 shares are necessary for a quorum when there are 100 outstanding issued shares). Assuming that Bank is not entitled to vote, its shares will not count toward achieving a quorum. Thus, in order to achieve a quorum Frank's proxy of David's shares must count. Proxy votes are allowable provided that all proxy requirements are satisfied. Assuming these requirements have been satisfied, it is acceptable for David's proxied shares to be counted towards a quorum.

2/02 Multi-state Essay Examination Question 4 - Example 3

#1
Share transfer restrictions are generally enforceable if they are not deemed unreasonable restraints or alienation. Generally, this requires a showing that 1. proper notice was given conspicuously on the share certificate, and 2. the restriction is reasonable.

In this case, the share transfer restriction probably is enforceable against Andrew because he must have had notice of the restriction, as a shareholder in a closely held corporation. The restraint is also reasonable in that it requires majority (not unanimous) approval. Andrew's only attack would be that a buy-back provision is implied in the event he is unable to transfer his shares. Andrew would probably be unsuccessful in challenging the restriction.

Bank may have a valid argument it can establish that failure to conspicuously note the restriction on the face of the share certificate does not afford it proper notice. Generally, the restriction must appear on the face of the share certificate, not on the back, in order to be enforceable. If it took w/o notice and a court agrees that the restriction should have appeared on the face of the share certificate, then the restriction will not be enforceable against Bank.

#2
To be entitled to vote, one must be the record owner on the record date. To become the record owner, a transferee must give notice to the corporate secretary before the record date so that the name of the record owner can be appropriately changed. Since Bank did not inform Cyco, Inc. 20 days before the annual meeting that it was the record owner, it was not entitled to vote As mentioned above, proper notice should have been given of the transfer before the record date to prevent this from happening. Bank could have also entered into a voting agreement with Andrew whereby Andrew would cast a vote in accordance with Bank's wishes. These agreements are enforceable, and if properly drafted, are irrevocable. Since Bank did not do this, however, it was not entitled to vote.

#3
A quorum is a majority of those shares entitled to vote. When calculating a quorum for 100 shares (the # of Cyco, Inc. shares outstanding), the number needed to be present is 51. For purpose of this calculation, proxy votes should be included. In this case, B&C were present with 40 shares, and F represented D by proxy (20 shares). This totals 60 of the 100 shares, making a quorum present. The fact that E was not in attendance and the fact that A, as record shareholder, was not present did not block the quorum. Thus, a quorum was present.

2/02 Exam Multistate Essay Examination Question 5 - Example 1

#1
A. At common law, this conveyance gave a fee tail Gerta with a contingent remainder in the heirs of her body and reversion in the grantor Gayle. The modern trend in these conveyances is to give the recipient of the fee tail a fee simple absolute. The reason for the discrepancy is the use of "to X, and the heirs of her body" versus "to X and her heirs." Gerta's interest presently vested at the time of conveyance, but her interest becomes possessory after Gayle's life estate terminates.

B. At common law, Gary would have a reversion because the remainder to Gerta's heirs of her body is contingent - until her death, Gerta has no heirs. Again the modern trend would give Gerta a fee simple absolute after the termination of Gayle's life estate. The affect of this modern trend is to leave Gary with nothing.

C. At common law, Gerta's children have contingent remainders and the grandchildren have nothing. The children's interests vest upon the death of Gerta - that's when they become "heirs of her body." The modern trend, which would result in Gerta receiving a fee simple absolute upon Gayle's death, would result in the children and grandchildren receiving nothing.

#2
A. Terry is the proper party to possess the house. Todd created successive life estates in Tom, Tess, and Terry, in that order. After Tom's life estate ends, it automatically goes to Tina for her life. Since Tina already died, her interest has expired and Terry's become a present possessory interest.

B. The interest will revert back to Todd's estate, and then be distributed according to his will or through intestate succession. The reason for this is that the remainder interest to Tom's issue contained a condition precedent for taking: survival was required for the interest to vest. Since this condition was not satisfied, and the interest did not vest, the remainder (which was not explicitly included in the will) in Todd's estate took effect.

#3
A. They may have no interest due to the Rule Against Perpetuities, discussed in part 3.B., below.

Assuming, arguendo, the conveyance does not violate the R.A.P., the affect of this conveyance is as follows:

> Otto: fee simple defeasible subject to shifting executory interest in the event the conditions subsequent occurs,
>
> Ophelia and her heirs: shifting executory interest that will enable her to terminate Otto's estate if the condition subsequent occurs.

The interest is an executory limitation b/c it cuts short another person's (Otto's) defeasible fee. It is shifting because it does not spring from the grantor's estate.

B. Yes, the executory limitation that will enable Ophelia's heirs to cut short the interest if alcohol is served violates the Rule Against Perpetuities (R.A.P.). The R.A.P., which applies to executory interests, states that an interest is valid if it must vest, if at all, within some life in being plus 21 years. Here, the condition subsequent would be unlawful restraint on alienation because the land would be bound forever. Thus the court will excise the condition subsequent (which terminates the executory interest), leaving Otto's grantee, Oprah, with a fee simple absolute.

2/02 Exam Multistate Essay Examination Question 5 - Example 2

#1
A. Gerta Grantee was granted a fee tail in the property with the vested remainder in her children. This is because of the wording - "the heirs of her body". Should her line of heirs end, the property would revert back to the grantor.

B. Immediately following Gayle's death, Gary has a reversion in the farm. If Gerta's blood line should end, the property would revert back to his mother's estate which would then go to him.

C. Gerta's children and grandchildren have a vested remainder in Gerta's fee tail. They will take the property on Gerta's death so long as the bloodline survives. Should all of Gerta bloodline die, the property would revert back to the grantor.

#2
A. At Tom's death, Terry would be entitled to the life estate. Since Tess predeceased her father, her interest in the life estate lapsed. Although Tess is a family member, the anti-lapse statute would not protect a devise of a life estate. Therefore, Tess's life estate is eliminated and Terry's life estate would begin at Tom's death.

B. The devise to the surviving issue of Tom represents a contingent remainder. This remainder is contingent upon the survival of the children following a contingent remainder is a reversion. Such that if the contingency is not met, the property reverts back to the original grantor. In the present case, upon Terry's death the property will go back to Todd's estate and be distributed according to the terms of his will. If there is no will, Tricia will get the house through intestate succession as his apparent only living heir.

#3
A. The devise which Owen left to Ophelia is a springing executory interest. This springing executory interest is subject to a condition precedent. This is because the language of "but if alcoholic beverages are ever served on the premises" creates a condition which if it occurs, Ophelia will spring ahead of Otto and his heirs and step into ownership of the property.

B. Oprah can sell liquor if she wants. The original provision in the devise violates the rule against perpetuities. Under the rule against perpetuities the remainder interest must vest or fail within a life in being at the time of the devise plus 21 yrs. The provision does not provide any restriction on the length of the restriction, therefore, the language which violates the rule is stricken and thus Otto receives a Fee Simple Absolute. With that fee simple absolute, Oprah may sell beer or wine.

2/02 Exam Multistate Essay Examination Question 5 - Example 3

#1
a. Gerta has a life estate. The grant to "my sister, Gerta Grantee, and the heirs of her body" is read to create a life estate for Gerta Grantee.

b. Gary has an executory interest. If on Gerta's death, Gerta has no heirs of her body - no lineal descendants - then Gary will take the farm.

c. Gerta's children and grandchildren have a contingent remainder subject to open. The interest is contingent, because each must survive Gerta to be one of Gerta's heirs. It is subject to open because Gerta may have more children or grandchildren prior to her death, each of whom would have a contingent remainder in the farm.

#2
a. Terry is entitled to possession of the house, with a life estate in the house. Tess's life estate fails because Tess did not survive Tom, who had the prior interest. The life estate does not go to Tess's heirs because Tess was the measuring life.

b. Assuming the question refers to 'who will be entitled to possession of the house following the death of all the life-tenants named in Todd's will' (not Tom's will, which we don't know anything about), then: the house goes to Todd's heirs. The interest given to Tom's issue was a contingent remainder. The contingent remainder required Tom's issue to survive Tom. Because Tom's issue did not survive him, the gift fails and the remainder goes to Todd's heirs.

#3
a. Ophelia and her heirs have an executory interest. Their right to the building comes about only if alcohol is served on the premises.

b. Otto could not grant more to his son than he owned. In this case, Otto could not transfer in fee simple absolute unless he owned in fee simple absolute. However, a ct. might strike down the restriction on use, a sort of dead hand control, on grounds of public policy. In that case, the grant to Otto would be rewritten by the ct. by striking the language including and after "but if." In that event, Otto would have taken in fee simple, and Oprah would not have a risk of losing the property.

2/02 Multi-state Essay Examination Question 6 - Example 1

#1
The note was enforceable. The articles (4) allows a note to be completed if not properly filled out. The blanks must be filled out correctly and to amounts and persons agreed upon with no fraud or criminal intent to defraud anyone. The proper completion made the note an unconditional promise to pay, a certain amount to the order of Lender on a certain date (September 1), and had no other conditions or undertakings by borrower.

#2
Lender may enforce the note. A note is payable to any holder of the instrument who is entitled to enforce the instrument. Its payable to anyone in possession of the note but not a holder, but still is entitled to enforce the note. And, any person not in possession but otherwise be entitled to enforce the note. Such a person (a Lender) must prove first that they would be entitled to enforce the note (payee), second they must prove the provisions of the note (date due, amount), third they must prove they are unable to produce the note, fourth the person must put up a bond in the amount to protect the court against a subsequent holder in due course or anyone else with a valid claim on the note.

#3
Borrower is still liable on the note because he paid Robber who forged the indorsement and was not himself a holder nor anyone who is entitled to enforce the note. The court will generally say that Borrower is liable even if Borrower reasonably believed Innocent was entitled to enforce the note than payment would still not discharge his duties because Innocent is not a person entitled to enforce the note because he took the note from Robber who has no rights in the note. Therefore when Borrower wrongfully pays Innocent no duties have discharged.

#4
Borrower has rights against Innocent. Innocent made presentment warranties to Borrower. The instrument is not altered, all signatures are genuine, and no notice to claims. Since the indorsement was forged there is a breach of warranty and Borrower can go against Innocent. Also, there are duties under contract when the instrument was presented by Innocent. Borrower may go back on Innocent and assert breach of contract.

2/02 Multi-state Essay Examination Question 6 - Example 2

#1
The note was enforceable against Borrower as completed. As to the completion of the amount payable line, a maker who's negligence in leaving an instrument blank allows another party to complete the instrument cannot use the unauthorized completion as a defense to payment. Accordingly, Borrower was obligated to pay the note as completed.

The fact that the payee line was not completed similarly does not effect Borrower's obligation to pay. As above, it was Borrower's own negligence that allowed the completion, and thus he could not assert the completion as a defense. Furthermore, leaving the payee blank simply makes the note bearer paper, and doesn't effect the maker's obligation to pay.

#2
Lender would still be entitled to enforce the note against Borrower. A person who was a holder of an instrument but who has lost the instrument or had it stolen (or if the instrument was destroyed) is still entitled to enforce the instrument against the maker, provided that he can prove the terms of the instrument. Lender had been a holder at the time of the theft because the note was payable to Lender and he had possession of it. Borrower would thus have to pay Lender the agreed upon $10,500.

#3
A maker is discharged if he pays someone who is entitled to enforce. The robber was not entitled to enforce the note because he was not a holder, or otherwise entitled to enforce the note. The robber was not a holder because he didn't take by negotiation, i.e. the note was payable to lender and not indorsed by him. Accordingly Robber did not have the right to enforce the instrument.

A party takes only the rights to an instrument that his transferer had. Because the thief was not entitled to enforce the note, he could not pass the right to enforce the note to Innocent. Therefore innocent, despite paying value for the note, was not entitled to enforce the note. Because innocent was not entitled to enforce the note, Borrower's payment to him did not discharge his obligation to Lender.

However, if Lender's negligence somehow lead to the theft of the note, or if Lender's failure to notify Borrower immediately constitutes negligence, Lender will not be permitted to recover from Borrower.

#4
Yes, borrower can pursue two courses of action against innocent. First, innocent breached a presentment warranty given to Borrower. A person who presents a note for payment warrants to the maker that, among other things, that the presenter is entitled to enforce the note. Because, as discussed above, innocent was not entitled to enforce the note, he breached this warranty and is answerable to borrower for borrower's damages.

Second, innocent converted the note when he purchased the note from robber. Although it is Lender who has the cause of action for this conversion, if Borrower pays Lender, he is subrogated

to Lender's rights against Innocent, and can thus recover against innocent for his conversion of the note.

2/02 Multi-state Essay Examination Question 6 - Example 3

#1
Yes, the note was enforceable against Borrower as completed. It was the Borrower who neglected to fill in Lender's name and the amount due. Lender helped Borrower by filling in the appropriate spaces because if the note were stolen and the spaces filled in by the thief, Borrower would probably be liable to pay a good faith purchaser for value because of Borrower's negligence in leaving those spaces blank. The note is still enforceable because Lender just inserted the terms already agreed to by the parties.

#2
Lender can still demand payment from Borrower on the note. Lender has a right to enforce because he was not negligent in holding the note and keeping in a safe place. Lender had no control over a person burglarizing his home. There may be a problem since lender failed to realize or report that the note was stolen, but this is doubtful because it was missing for only one week. Borrower has an obligation to pay because they agreed to and know the contents of the note and are now on notice that if anyone attempts to present and collect the note, the note is invalid because of a forgery.

#3
No, this payment did not discharge Borrower's obligation to Lender on the note. The note contained a forgery of Lender's signature by Robber. All persons indorsing the note after robber become liable because they are warranting the validity fo all signatures before theirs. Here lender's endorsement was forged so Borrower failed to verify Lender's signature and is still liable to Lender for $10,500.

#4
Yes, Borrower does have rights of recovery against Innocent. Each person who indorses a note is indorsing the validity of all the signatures on the note before their own. Innocent indorsed the note creating a "warranty" that all prior signatures on the note including Lender's (a forgery). Innocent could have protected himself by indorsing his name followed by "without recourse." That language would disallow Borrower from recovering against Innocent because Innocent is only warrantying his own signature as valid.